A Simple Evidentiary Approach

Clearing a Path Through the Jungle

I did it!

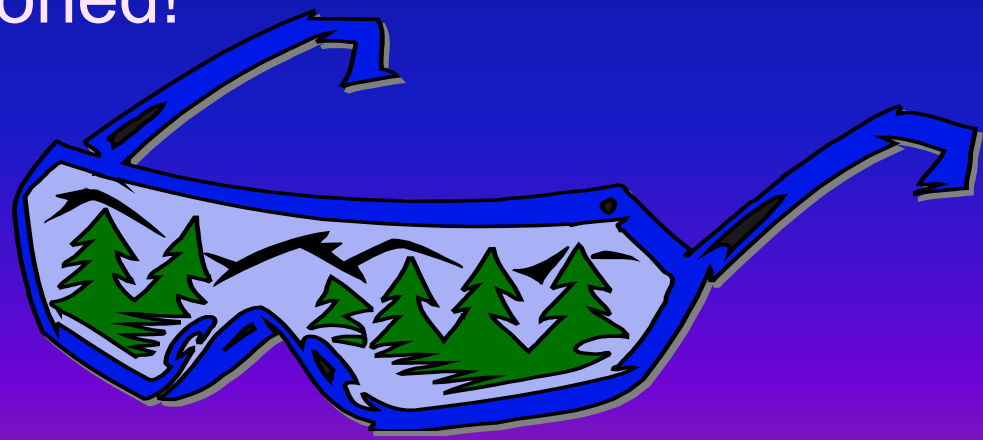
Confessions are “among the most effectual proof in the law.” *United States v. Ellis, 2002 CAAF Lexis 1247 (2002)*
The ultimate evidence at trial often comes from the defendant’s own statements.

And the rule for admission sounds so very simple. . .

Confessions must be voluntary

So why do judges agonize and write thousands of pages a year on this topic?

Because short of a dramatic Perry Mason type of courtroom declaration, voluntariness has grown into a tangled topic-- a topic in which it is very difficult to see the woods for the trees, not a few of which are poisoned!



So why do judges agonize and write
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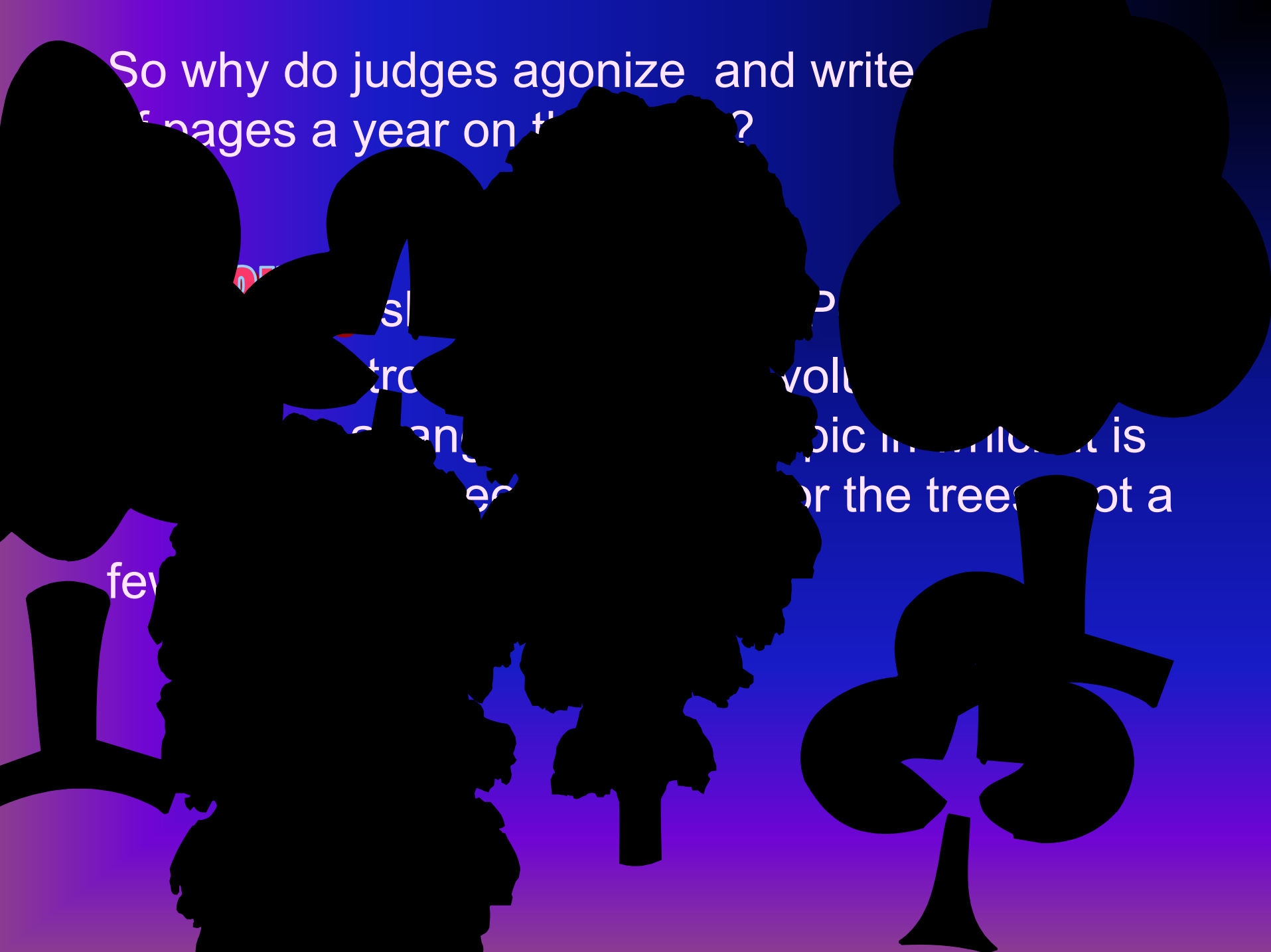


What you, as a judge, need is a simple tool to cut through some of the underbrush surrounding confession admissibility.

No! No! Wrong Tool!

Here’s the right one

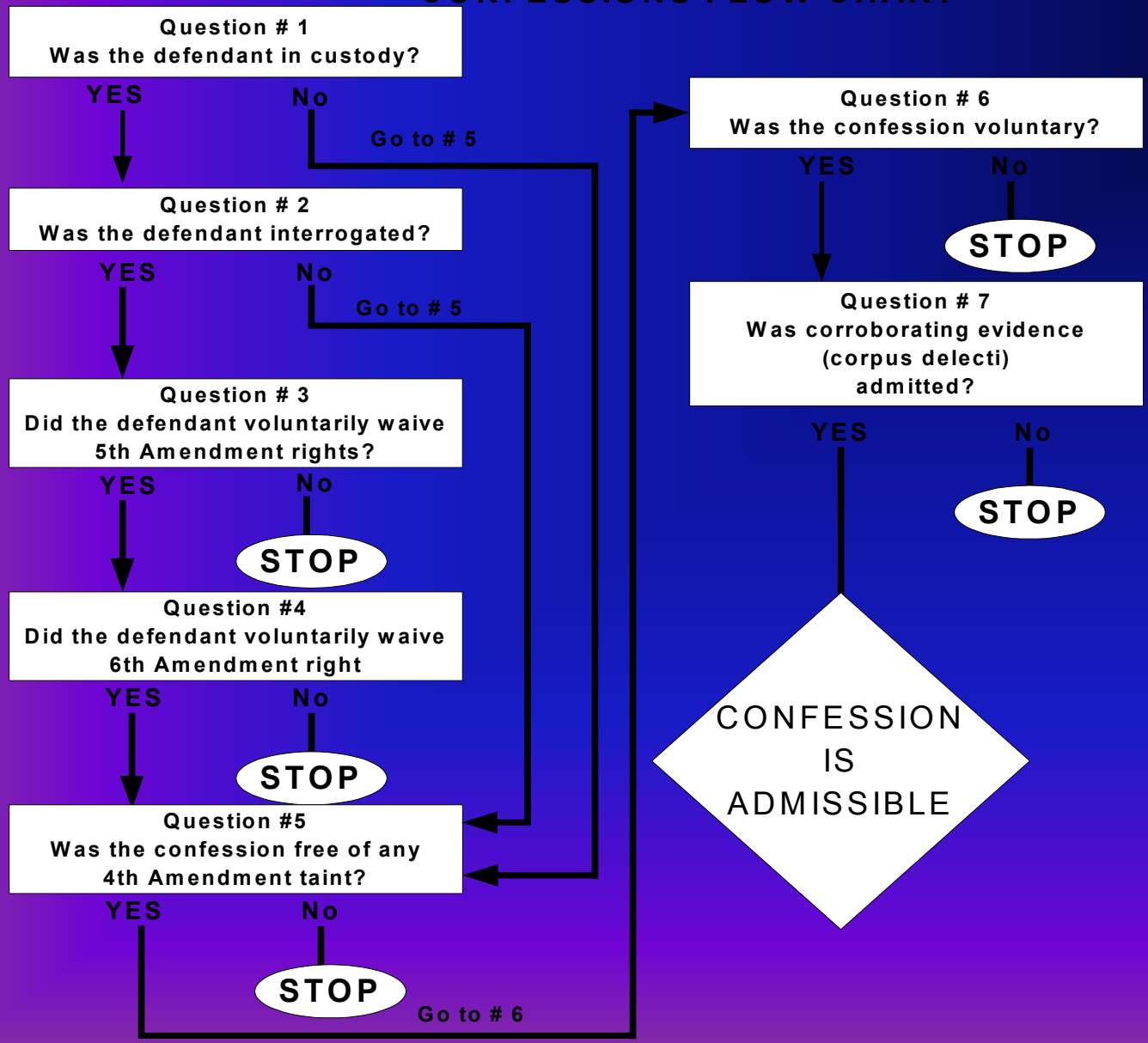
"The Seven Helpful Questions"

The seven questions are:

1. Was the defendant in custody?
2. Was the defendant interrogated?
3. Did the defendant voluntarily waive 5th Amendment rights?
4. Did the defendant voluntarily waive 6th Amendment right?
5. Was the confession free of any 4th Amendment taint?
6. Was the confession voluntary?
7. Was corroborating evidence (corpus delecti) admitted?

The following flow chart may be found and down loaded from "Check This Out." (my suggestion is to have a copy handy for the rest of this session) It gives a visual overview of The Seven Helpful Questions.

PUTTING THE SEVEN HELPFUL QUESTIONS TO WORK
CONFESSIONS FLOW CHART



Prepared by Barbara Arnold Harcourt
2002

Before you begin to analyze a confession using the Seven Questions consider the following. . . .

This analysis saves you the trouble of addressing **two** foundational evidentiary issues.

Remember foundational issues from way back in Week One??

The first issue is hearsay

When examining confessions for admissibility, we don't consider them hearsay.

How can this be? Confessions certainly ***look*** like hearsay. Aren't they "statements, other than extrajudicial ones made by a declarant while testifying at trial?"

And surely confessions are “offered to prove the truth of the matter asserted?”
FRE 801

Well the Rules have a lot of magic

and what seems to be hearsay becomes

NON-HEARSAY

Federal Rule of Evidence 802 (d)(2)

We will look at the other fundamental issue, FRE 403, at the end of this presentation.

At a rate of 3 slide per minute this slide show should last about one hour. So feel free to take breaks as needed.

So if you are ready, let's start cutting a path through the "confession jungle" using the Seven Helpful Questions

HELPFUL QUESTION

NUMBER ONE

"Was the defendant in custody at the time the statement was made?"

The issue of custody is pivotal to the entire analysis. *State v. Aesoph*, 647 N. W. 2d 743 (S.D. 2002).

If an incriminating statement was non-custodial, we can skip Helpful Questions 2, 3, and 4--no need to worry about *Miranda* warnings, no need to find waiver of Constitutional rights--and life just got a lot simpler!

The catch is that custody is not always an easy call.

To make that call you need to do a two part inquiry:

1. Examine all the circumstances and
2. Ask “Would a reasonable person have felt at liberty to terminate the interrogation and leave?”

Courts have found "reasonable people" would have felt free to leave some very restrictive situations

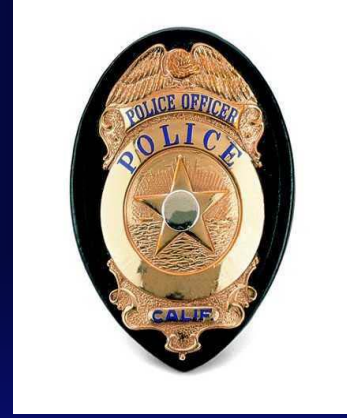
The Classic Example

Defendant is asked by authorities to go to the police station, put in a small room, the door is shut “for privacy,” and questioned by an officer.

As long as the defendant is not arrested and is free to leave, there is no custody and no need for *Miranda* warnings.

California v. Beheler,463 U.S.1121 (1983)

The police are not required to give warnings to everyone they question.



Also, the mere fact a suspect is questioned in a station house does not trigger *Miranda.*

North Carolina v.Thompson, 149 N.C. App. 276, 560 S.E.2d 568 (2002)

To be in custody a person must be arrested or have a restraint on freedom of movement of the degree associated with a formal arrest. ***Beheler, supra.***

At what point this level of restraint is reached is determined by a

reasonable person test

THE TEST IS OBJECTIVE

The subjective views of either the officer or the accused are not factors.

Stansbury v. California, 511 U.S. 318 (1994):
Bond v. Maryland, 788 A.2d 705 (Md.2002)

An officer's unarticulated plans, thoughts, etc. aren't relevant to whether a reasonable person would feel at liberty to leave. *Stansbury, supra.*

Also, the fact that a person is a suspect in a criminal investigation doesn't automatically cause police questioning to become custodial.

Some objective factors are:

- Physical restraint of accused
- Number of police officers present
- Any show of force--guns, etc.
- Where the interview took place
- What the officers said to the accused

Because the test is so fact sensitive,
one additional fact may tip the scale from non-custody to custody.

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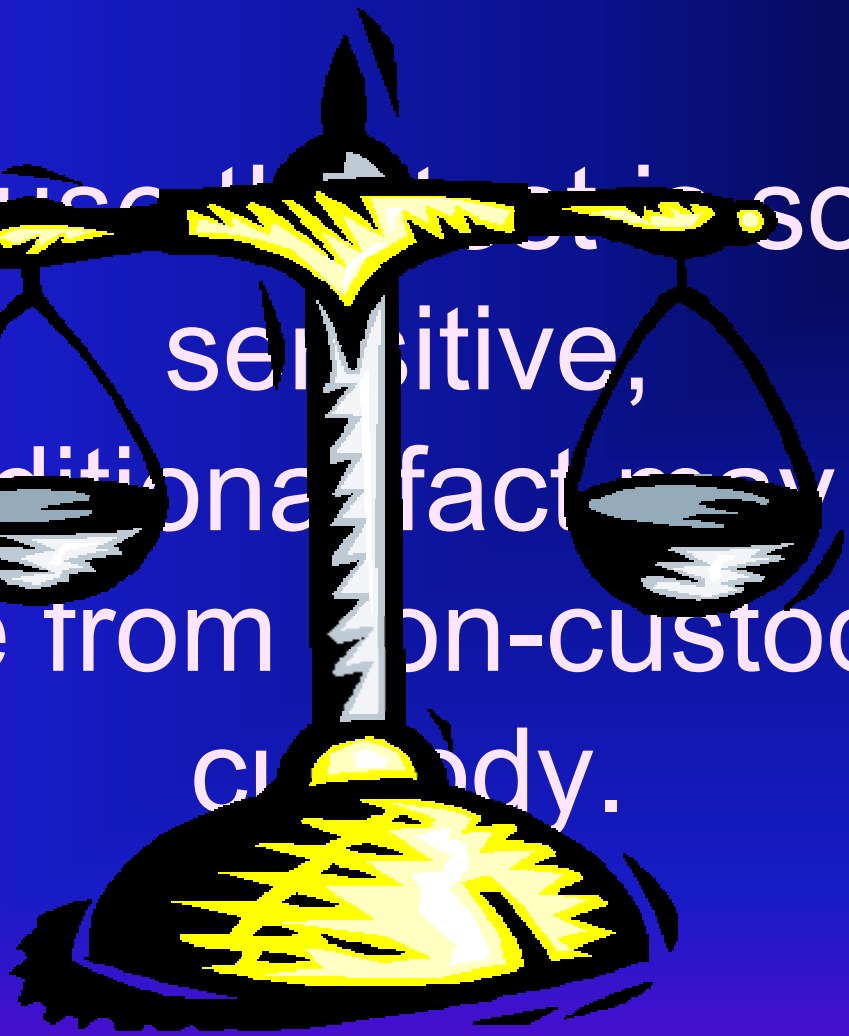


For example:
Routine traffic stops do not put an accused in custody.

Minnesota v. Murphy, 465 U.S. 420 (1984)

But add one factor. . .

Drawn Guns

and

you've got

CUSTODY

By merely questioning a suspect at home, police have not put the person in custody, even if the questioning becomes lengthy. *Aesoph, supra.*

However, being questioned in one's bedroom late at night could cause a reasonable person to believe they were not free to terminate the interrogation and leave. *Bond v. Maryland, 788 A.2d 705 (Md. 2002)*

Often the issue of custody turns on whether the police officer told the accused that they were not under arrest and were free to leave.

The State has the burden

of proving accused was not in custody



Now it's your turn! How would you rule on the issue of custody in the following cases?

(No need to post anything. Just answer quietly to yourself!)



M is on probation. A term of his probation is "You shall be truthful with probation officers in all matters. Failure to comply may result in probation revocation."

After a year on probation, M is notified he must meet with his probation officer in her office. The officer asks M about recent crimes. M admits that he committed a new crime.

Is M in custody 

You are absolutely right!

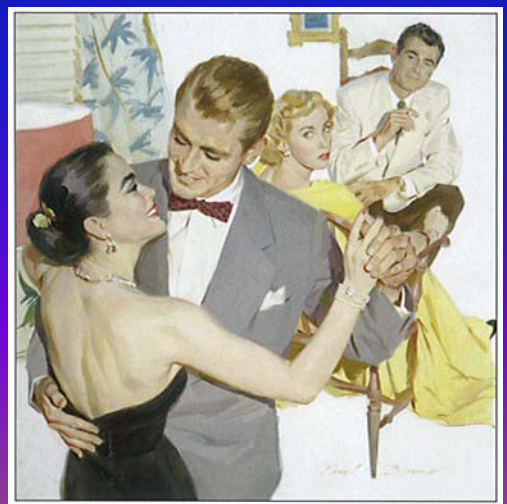
The answer is "No custody."

These are the facts of *Minnesota v. Murphy, 465 U.S. 420 (1984)*

How would you rule in this situation:

H is a suspect in a murder case. The police know a warrant has previously been issued for H's arrest on drug charges.

Police ask H's "trusted friend" to wear a wire while talking with H. The friends meet. H confesses his guilt as to the murder.



Was H in custody for *Miranda* purposes?

100% correct!

The answer is "No custody."

South Dakota v. Hoadley, 651 N.W.2d 249 (S.D. 2002)

A suspect is questioned in a police car.

Is she in custody?

Wow! You are really good at this!

The answer is "She may or may not be in custody."

This is only one factor in determining whether or not a reasonable person would have felt free to leave.

Last Question (at least for a while)

D. was driving to a shed that contains marijuana and weapons. He is forced out of his car at gun point and told to lay on the ground by officers.

Was there custody?

Absolutely.

In your analysis:

If you find the answer to Helpful Question Number One is “No custody,” skip Helpful Questions Two, Three, and Four. Go directly to Question Five.

If your answer to Helpful Question Number One is “Yes, the accused was in custody,” go to Question Number Two.

We’re making progress clearing the path to confession admissibility!

HELPFUL QUESTION

NUMBER TWO

“Was the defendant interrogated?”

As judges, we have learned from our infancy the rule that *Miranda* warnings must be given if custody AND interrogation are both present.

There must be interrogation to trigger the need for warnings and a finding of waiver.

Even a defendant locked in the deepest dungeon may make a spontaneous confession which does not require *Miranda* advisement (although it may not pass Question 5,"Is the confession voluntary?" due to the inherent coerciveness of the custody).

“I’m too drunk to drive.”

Was found to be volunteered and not the product of interrogation, even though the accused was in custody.

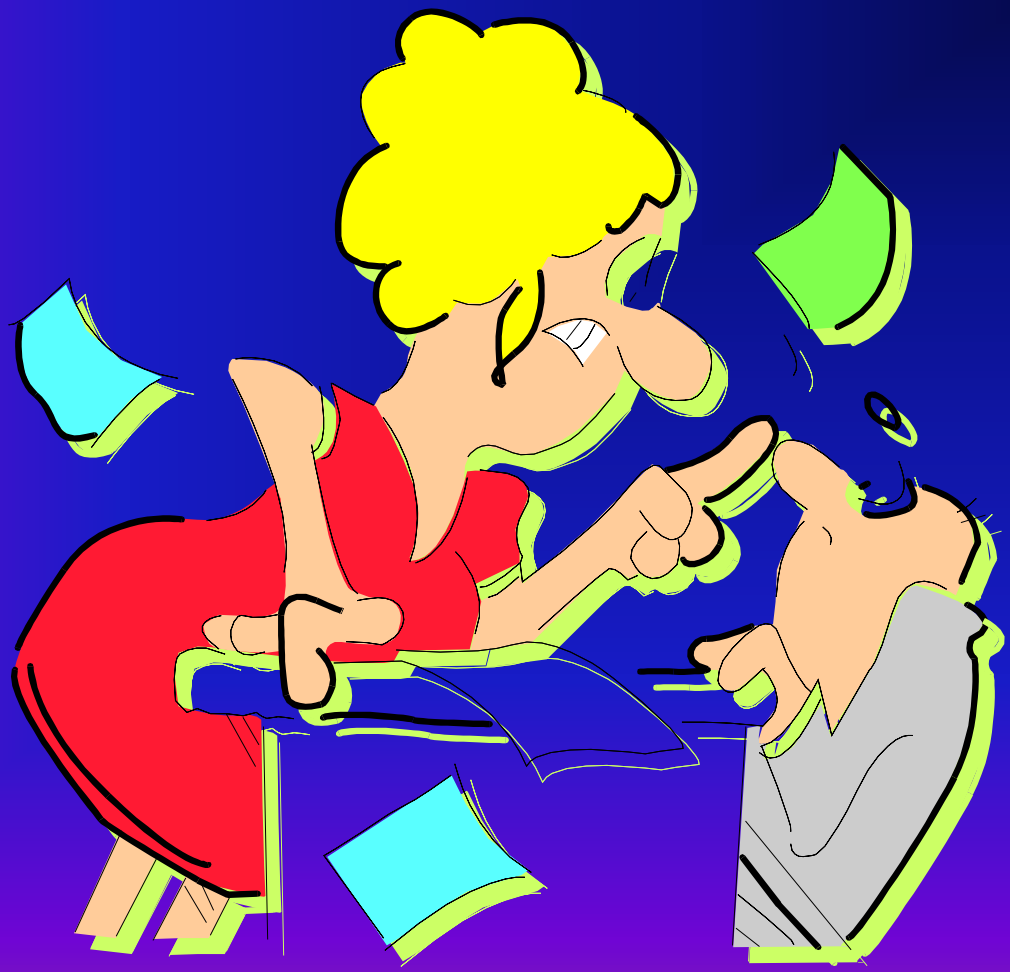
Montana v. Belgarde, 962 P.2d 571 (Mont. 1998)

Obviously, express questioning falls into the definition of interrogation.

But the concept is much broader and includes a "functional equivalent" to interrogation.

Functional equivalents are "words or *actions* of police such that police should know are reasonably likely to elicit an incriminating response." *Rhode Island v. Innis, 446 U.S. 291 (1980)*

Who is an interrogator?



It would seem that police would always be included in this category while private persons would not.

However, we will see certain situations in which police officers may ask a question and it is not interrogation.

On the flip side, a private individual may become state actor subject to the requirements of *Miranda.*

Not all questions posed by law enforcement officers are considered interrogation.

Requesting information for the purpose of booking is not interrogation. If the questions are not intended to elicit incriminating statements, they fall outside *Miranda.* *Mitchell v. United States, 746 A.2d 877 (D.C. 2002)*

Merely asking a defendant the identity of other people who were in the room with him was not interrogation for the purpose of this rule. *United States v. Guitarrez 92 F.3d 468 (7th Cir. 1996)*

Pubic Safety Exception

This exception allows officers to inquire about dangerous items such as. . .

GUNS

If a defendant replies with incriminating statements;

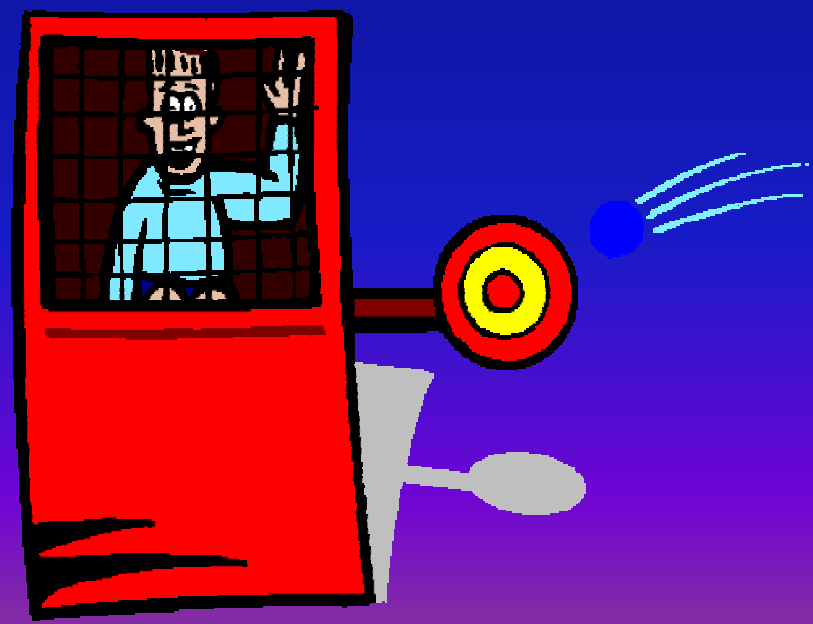
she may not have them excluded on the basis of the officer's failure to give Constitutional warnings.

Courts have ruled that no interrogation exists when police make certain

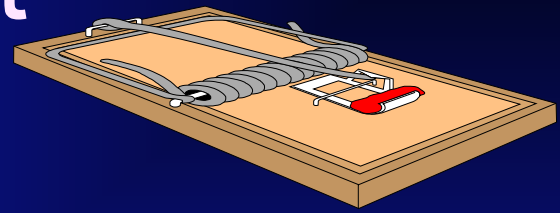
statements

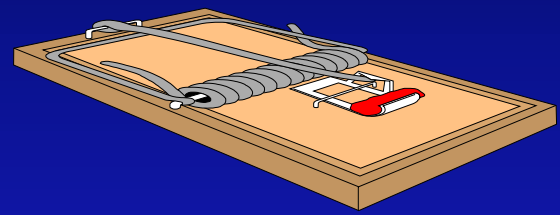
that are not intended as questions.

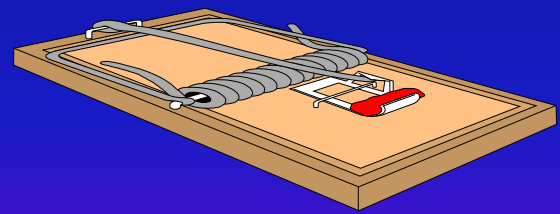
For instance, telling a suspect he is in “big trouble” is not interrogation. Volunteered statements are not subject to warnings. *United States v. Flores, 33 F.3d 1164 (CA 9 Ariz. 1994)*

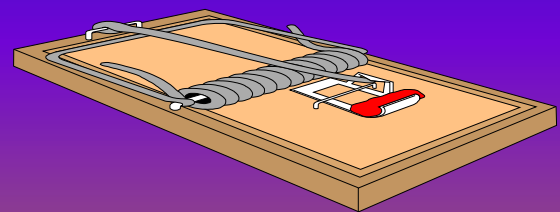


However, if a statement was intended by the officer to induce a confession, it is interrogation and *Miranda* warnings are necessary.









The State has the burden

of proving there was no interrogation



It's your turn again!
How would you rule on the issue of interrogation in the following cases?



An officer asked a defendant, who was in custody, if she had any drugs or needles on her person.

Was there “interrogation?”

Right you are. (You must do this sort of thing for a living!)

No interrogation. Public safety exception. *United States v. Carrillo, 16 F.3d 1046 (CA9 Nev. 1994)*

During booking, a jailer asks defendant who was the driver of the vehicle. Defendant answered that he was.

Was this interrogation?

Yes, it was an interrogation. It does not fit under the "booking" exception.

State v. Brann, 736 A.2d 251 (Me. 1999)

Private persons need not give warnings concerning Constitutional rights.

This remains true even if the conversation is overheard by police officers.

Members of private security forces are generally considered private actors.

United States v. Garlock, 19 F3d 441 (CA 8 Iowa 1994)

However, private persons may become state actors under certain circumstances

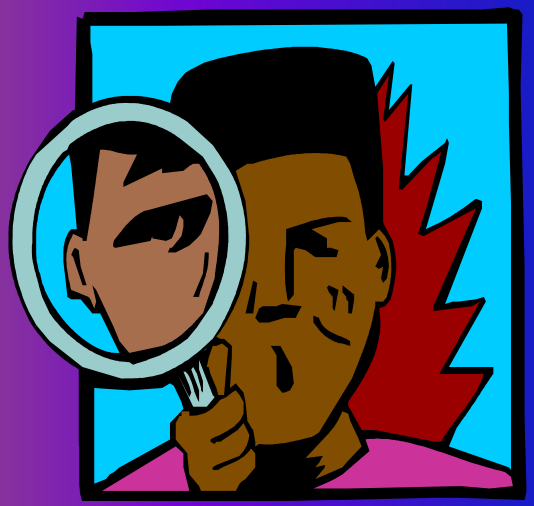
A court appointed psychiatric examiner may be deemed a state actor.

Hittson v. Georgia, 449 S.E. 2d 586 (Ga. 1994)

Two factors are used in determining whether a private individual is a state actor/agent.

Whether the government knew and acquised and

Did the questioning further the private party's own ends. *Sabo v. Virginia, 38 Va. App. 63, 561 S.E. 2d 761 (2002)*



This analysis tracks the one used to determine if a search was conducted by a person acting as a private individual or as a state agent.

Recalling our Confession Flow Chart, it is once again time to move to the next step.

If the answer to Question Two (Was the defendant interrogated?) is "no," skip to Helpful Question Five. If "yes" go to Question Three.

A lot of the underbrush has been removed by Helpful Questions One and Two!

HELPFUL QUESTION

NUMBER THREE

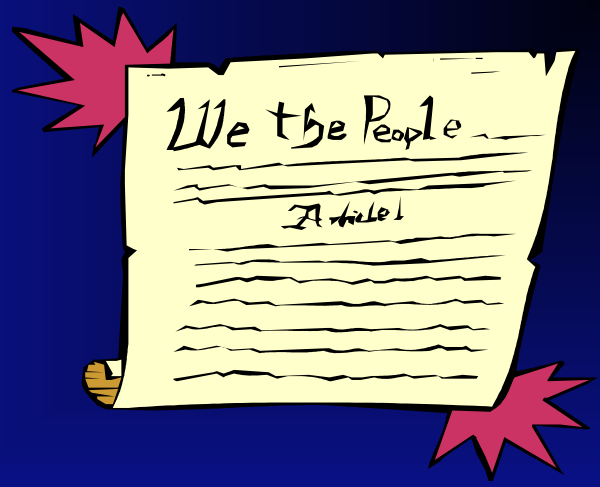
"Did the defendant voluntarily waive 5th Amendment rights?"

AND

HELPFUL QUESTION

NUMBER FOUR

"Did the defendant voluntarily waive 6th Amendment rights?"



A defendant's right to counsel exists under both the 5th and 6th Amendments to the Constitution.

For the purposes of this course section, we will be discussing waiver of 5th and 6th rights together.

The waiver of right to counsel and right against self-incrimination are distinct but have the same standard.

both custody

and

interrogation

exists, then

THE BIG FOUR

must be given.

- ✯ You have the right to remain silent.
- ✯ Anything you do say may be used against you.
- ✯ You have the right to the presence of an attorney.
- ✯ You have the right to court appointed counsel. *Miranda v. Arizona, 384 U.S.436 (1966)*

Plus any advisements mandated by your state law.

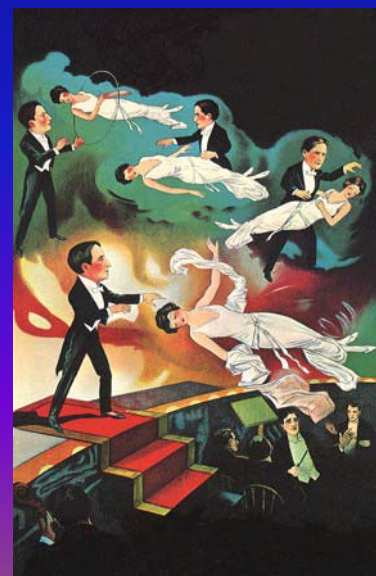
These advisements are necessary because there is an element of “coercion inherent in custodial interrogations which blurs the line between voluntary and involuntary statements.”

Dickerson v. Untied States, 530 U.S. 428 (2000)

Waiver of rights must be voluntary.
We need to make a very important distinction at this point. 

A finding that the defendant voluntarily waived his rights under *Miranda* is not the same as a finding that a confession is voluntary (see Helpful Question Six).

In order to find waiver, the Court need not find that the defendant understood every possible ramification of the waiver.



The state must prove:

1. Defendant understood what the *Miranda* warning meant.
2. She knew she could stand mute.
3. She knew the state intended to use anything she said to convict her.

Missouri v. Armstrong, 72 S.W. 3d 327 (Mo.App. 2002)

The advice of rights must be given in a form the defendant can understand.

This can be done in a variety of ways.

An oral reading of rights may be combined with the defendant reading and signing a waiver form.

Police often video tape the defendant receiving and waiving his rights.

No matter what format is used, defendant's silence can not be used to establish waiver.

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Language and physical barriers such as diminished hearing or sight must be addressed by the interrogators.

The court may consider a number of factors when assessing whether the defendant understood the warnings.

Possible factors:

- Prior experience with police
- Prior advice of *Miranda* warnings
- Level of intelligence
- Age
- Vocabulary
- Intoxication
- Emotional state
- Mental disease
- Level of education, including literacy

Connecticut v. Stevensen, 70 Conn. App. 29, 797 A.2d 1 (2002)

Once the court finds the defendant understood the rights, the next issue is whether the defendant gave up the rights.

The test is

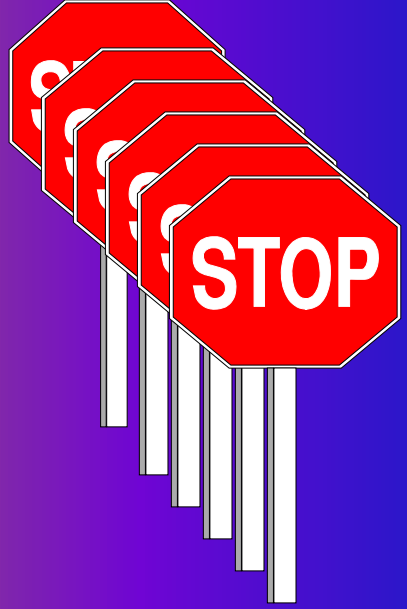
Totality of Circumstances

This test is an old friend we will meet again when we consider whether or not the confession itself is voluntary.

There is no “prescribed ritual” for a defendant to waive or invoke her rights.

An express oral or written waiver is not required to establish voluntary relinquishment of rights.
Horan v. Indiana, 682 N.E.2d 502 (Ind. 1997)

However, defendant’s signature or initials a on waiver form constitutes substantial evidence.



When a defendant invokes his rights, the interrogation must cease.

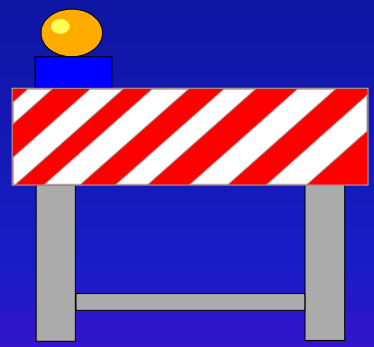
A defendant may not assert his right to remain silent by answering some questions and refusing to answer others.

North Carolina v. Cunningham, 344 N. C. 341, 474 S.E.2d 277 (1996)

Once waived

defendant cannot reassert his rights without clearly re-invoking the rights.

When a defendant has terminated questioning, the authorities must issue fresh warnings before asking any more questions.



At this point, a word needs to be said about who has the burden of proof in a hearing to determine whether or not a confessions is admissible.

And you guessed it. . . .

The State has the burden

The state's burden is preponderance under the federal Constitution--5th, 6th and 14th Amendments. *Thompson v. Keohane, 519 U.S. 991 (1995)*

HOWEVER

Your state constitution may require a stricter standard.

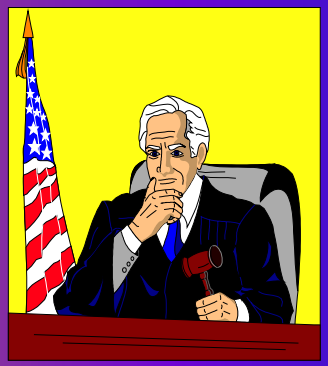


I'm getting just a little tired of doing all the talking. It's time for you apply the rules. Would you find a knowing, intelligent, voluntary waiver in the following cases?



Defendant is arrested. When advised of his rights, he said, “I ain’t did nothing. If you think I did something, then I’m shutting up and I want to see a lawyer, you know. I ain’t got no business talking. I didn’t have nothing to do with it.”

Police continued questioning. Did the defendant invoke his rights?



At least one state has said no.

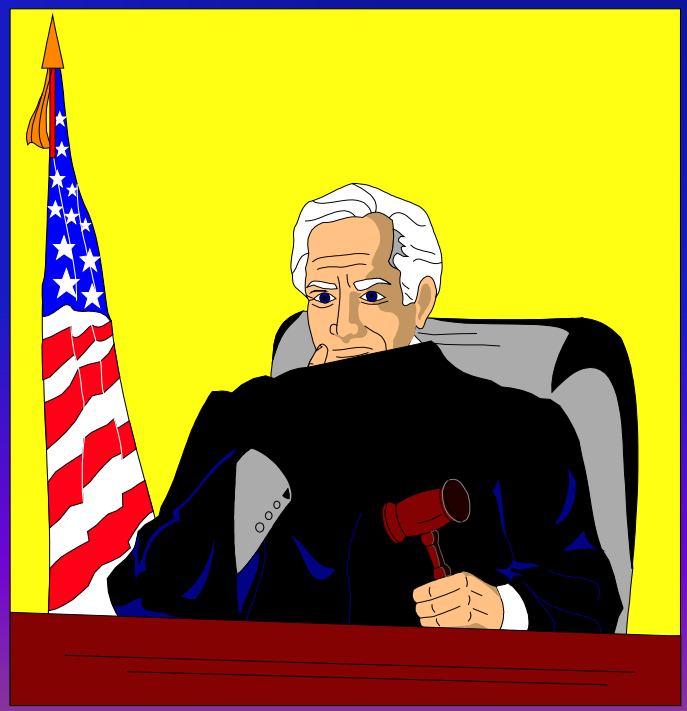
Defendant “elected to proceed without counsel and gave up the right to remain silent.”

An ambiguous request for counsel does not cut off interrogation. *Missouri v. Figgins, 839 S.W. 2d 630 (Mo. App. 1992)*

A defendant was in custody. After warnings were given, he said his mother had secured a "high priced" lawyer for him. Later defendant said, "Maybe I ought to talk to a lawyer." The officer asked if defendant wanted a lawyer. The defendant replied, "Tell me what you have and I might make you a proposition."

Did defendant invoke his rights?

You are such a quick study!!
The answer is no. The court found the first remark to be bragging and the second statement was not a clear invocation of right to counsel. *People v. Johnson, 6 Cal. 4th 1, 859 P.2d 673 (1993)*

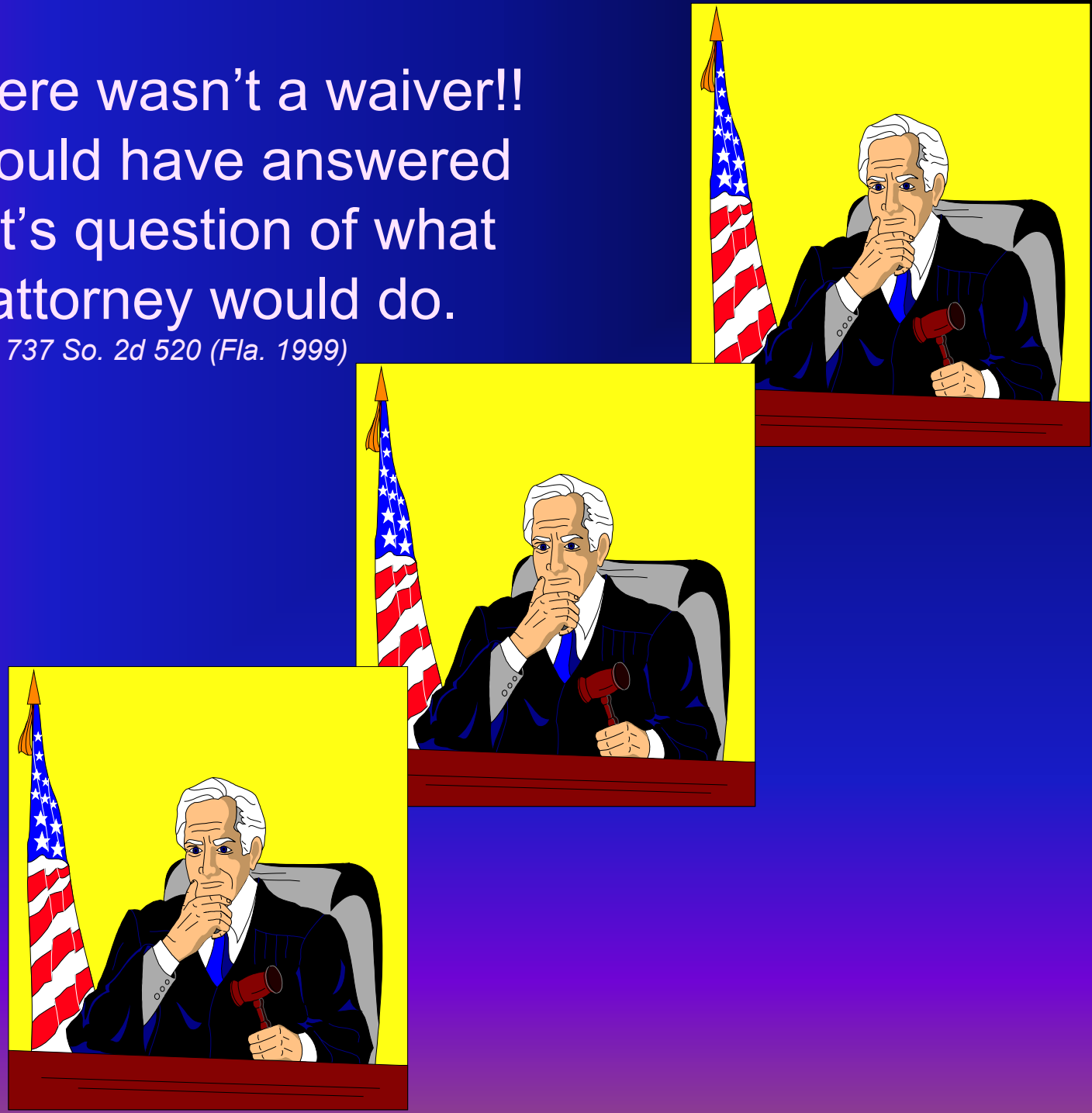


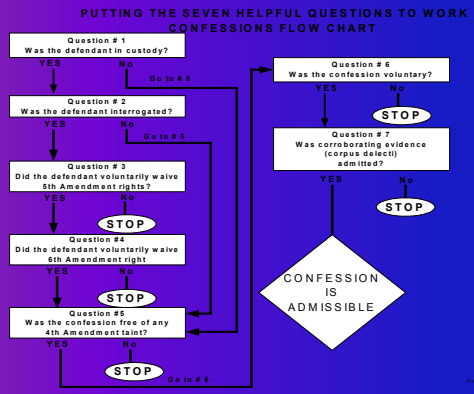
Once again, the defendant has been arrested and given his *Miranda* rights. He signed a waiver. Police asked if he wanted an attorney. Defendant said, “What good is an attorney going to do?”

Was there knowing, intelligent, and voluntary waiver?

Nope! There wasn't a waiver!! Police should have answered defendant's question of what good an attorney would do.

Almeida v. Florida, 737 So. 2d 520 (Fla. 1999)





Turning back to our handy Confession Flow Chart, if the answer to Helpful Questions Three and Four is “No, the defendant did not voluntarily waive his Constitutional rights,” then you analysis is

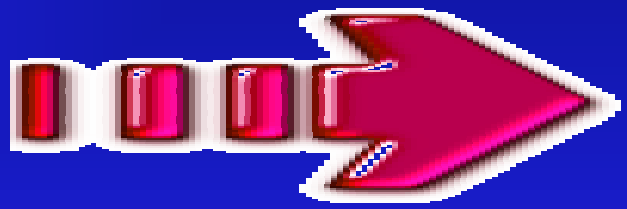
Finished

BUT

If on the other hand,

you find “yes” to both Question Three and Four, we have removed a big obstacle in the path of finding a confession admissible!

And we’re ready to go to Helpful Question Number Five.



HELPFUL QUESTION

NUMBER FIVE

"Was the confession free of any 4th Amendment taint?"

The mere fact that *Miranda* warning were given and waived does not automatically remove taint from a 4th Amendment violation.

We're done with waivers. No U turns allowed!

The mere fact that *Miranda* warning were given and waived does not automatically remove taint from a 4th Amendment violation.

We're dor . No U turns allo

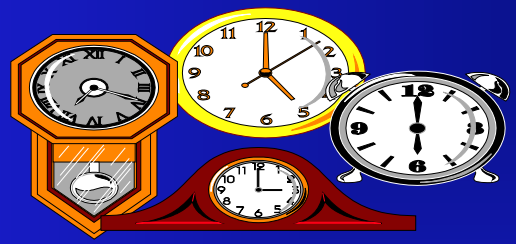
The Rule

There must be a break in "causal connection between the illegality and the confession," to allow the admission of the confession.

Dunaway v. New York, 442 U.S. 200 (1979): Lanier v. South Carolina, 474 U.S. 25 (1985)

Factors to consider are

1. Closeness in time between 4th Amendment violation and confession



2. Intervening factors and

3. Purpose and flagrancy of official misconduct.

Brown v. Illinois, 422 U.S. 590 (1975) balancing test

However, the Supreme Court makes it clear that suppression of a confession following a violation of the 4th Amendment is not required in all cases. The rule protects the physical integrity of the home, not a confession obtained voluntarily. *New York v. Harris, 495 U.S. 14 (1990); North Carolina v. Worsly, 336 N.C. 730, 445 S.E. 2d 68 (1994).*



Ready for another fact pattern?
Was the confession admissible under the following circumstances?



Defendant was held for five hours in illegal detention. Authorities gave him three sets of *Miranda* warnings. He saw his girlfriend and another friend. He was put in a line up and told his fingerprints matched those at the crime scene. Was his confession free of taint?

No. It was still tainted. *Taylor v. Alabama, 457 U.S. 687 (1982)*

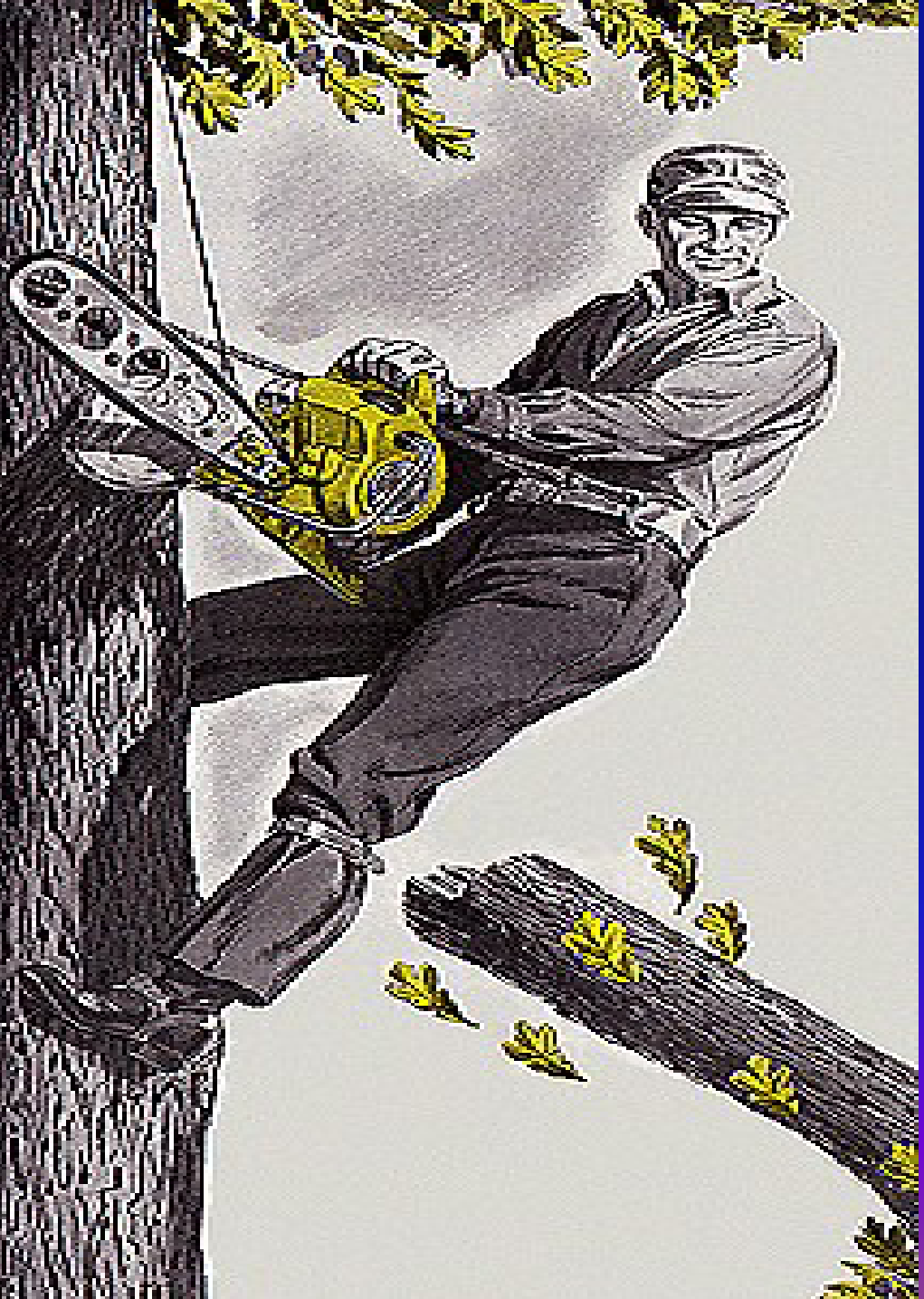
If Question Five is answered "No," you must **Stop** your analysis.

The confession is not admissible.

If the answer is "Yes," move one space forward--Question Six

Due to all your hard work

we are beginning to see light



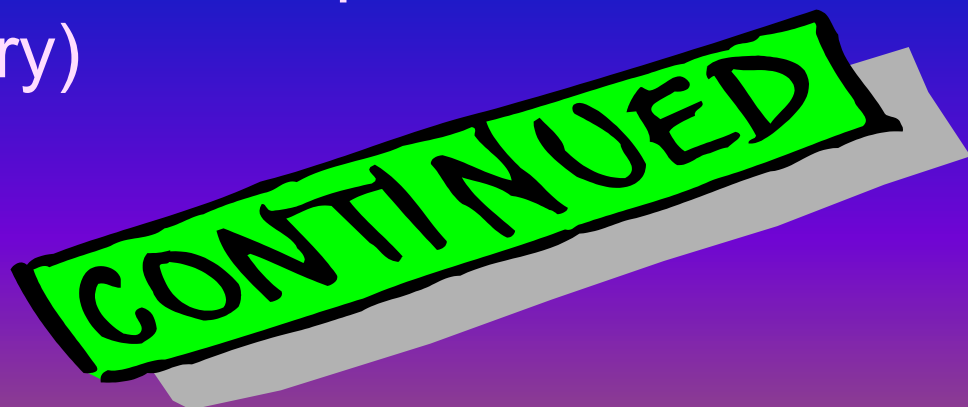
. . .at the end of the confession "tunnel."

But before we look at Question Number Six, let's talk a little

Procedural Short Course

1. A separate hearing must be held to determine the voluntariness of a confession. (Often called *Jackson-Denno* hearing)

2. The judge decides if a confession is voluntary. (infrequently a separate jury may make this determination prior to trial to a different jury)



3. The state bears the burden to show confession voluntary. Burden is preponderance under the federal Constitution. A state constitution can have a higher standard (but not lower).

4. The court is free to disbelieve the evidence of the defendant or authorities. A clear record must be made.

5. The truth of the confession is not at issue.

6. The defendant may testify at a voluntariness hearing and refuse to testify at trial.

Now its on to Helpful Question Six

HELPFUL QUESTION

NUMBER SIX

“Was the confession voluntary?”

We're getting to the heart of the matter!

Isn’t this just a rehash of our waiver discussion?

No

As we have seen, there are numerous cases, when custody and/or interrogation are absent. These cases are not subject to a waiver analysis. However, the court must still find that the defendant gave the confession voluntarily before it can be admitted into evidence.

Thus, it is important to remember that voluntary waiver does not always equal a voluntary confession. *Sliney v. Florida, 699 So.2d 662 (Fla. 1997)*

Although a voluntary waiver is very probative evidence of voluntariness, other circumstances may cause a confession to be involuntary.

A voluntary confession is a due process right under the 14th Amendment. *Crane v. Kentucky, 476 U.S. 683 (1986)*

UNDERLYING RULE

The court must find that the defendant's will was not overborne.

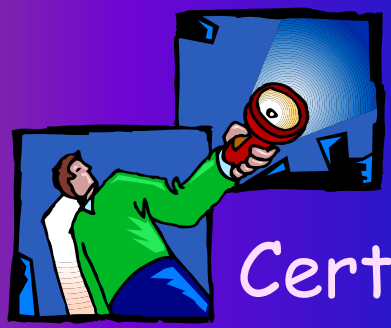
The Court of Special Appeals of Maryland has put it rather colorfully, “. . .unless it first be shown to be free of any coercive barnacles that may have attached by improper means to prevent the expression from being voluntary.” *Minehan v. State, 2002 Md. App. Lexis 176.*

As we have seen throughout this session, the state bears the burden. In some states, this is a beyond reasonable doubt standard. *Henry v. Indiana, 738 N.E.2d 663 (Ind. 2000)*

Voluntary confessions are not the product of promises, threats or actual violence.

Voluntariness is tested by reviewing the totality of the circumstances. *South Carolina v. Crawley, 349 S.C. 459, 562 S.E.2d 683 (2002); Missouri v. Armstrong, 72 S.W.3d 327 (Mo. App. 2002)*

Courts look carefully at allegations that the defendant was subjected to coercive treatment or swayed by promises by authorities.



Certain situations are more coercive than others. . .

Your analysis of a confession's voluntariness may include the following factors

- ➔ Defendant's youth
- ➔ Length of detention
- ➔ Repeated or prolonged nature of questions
- ➔ Use of physical punishments--lack of sleep or food
- ➔ The lack of education
- ➔ Prior criminal experience of defendant
- ➔ Existence of any threat or inducement
- ➔ Other improper influences *South Dakota v. Aesoph, 647 N.W.2d 743 (2002): Henry, supra.*

These factors are similar to the ones we used in Helpful Questions 3 & 4 to evaluate voluntary waivers.

However, courts don't just "look at cold and sterile lists of isolated facts but a holistic assessment of human interaction." *United States v. Ellis, 2002 CAAF Lexis (2002)*

The court reviews what was not done and said, as well as what was done and said.

Let’s turn our attention to six specific types of circumstances in the “totality of circumstances” test.

Mental State

Deception

Inducement

Coercion

Violence

Length of Detention

Mental State

A low level of intelligence, by itself, doesn't render a voluntary confession involuntary.

The same holds true for intoxication.

While mental state alone does not produce an involuntary confession, it becomes a much greater factor if authorities use "more subtle forms of psychological pressure." *Allan v. Nevada, 38 P.3d 175 (Nev. 2002)*



Your turn!

Defendant gave a confession. At the hearing to determine voluntariness, defendant's expert testifies that defendant understood the basic meaning of his rights but had "a very strong tendency to be suggestible."

Was the confession voluntary?



Yes. There was no evidence defendant's will was overborne.



Your turn again!

A defendant has a blood alcohol content of .24% and gives a confession.

Was the confession voluntary?



Yes. This factor alone doesn't cause a confession to be involuntary. *Missouri v. Mitchell, 20 S.W.3d 123 (Mo. App. 1999); Missouri v. Armstrong, 72 S.W.3d 327 (Mo. App. 2002)*

Deception

Misrepresentation by police doesn't automatically make a confession involuntary. *Escobar v. Florida, 699 So.2d 933 (Fla. 1997)*

Police can lie about finding defendant's finger prints at the crime scene.



What about this case?

Police tell a suspect that she is only a witness, not a suspect, and exaggerate the evidence against her.

Was the confession voluntary?



Yes. *Oregon v. Mathison, 429 U.S. 492, 495 (1977)*

Inducements

A confession procured by promises is involuntary. "The test . . . is whether the inducement is of a nature calculated under the circumstances to induce a confession irrespective of its truth or falsity. *Greer v. Mississippi, 818 So.2d 352 (Miss. App. 2002)*

Inducements often have an element of deception as well.

Just by being a friendly or sympathetic, a interrogator has not been found to improperly induce a confession. *Beltz V. Alaska, 980 P.2d 474 (Ala. 1999)*



How about this set of facts?

Officer promises to recommend that defendant be released on his own recognizance. Defendant then confessed.

Was the confession voluntary?



Yes. *Commonwealth of Pennsylvania v. Tomplin, 795 A.2d 955 (Penn. 2002)*



Police officer said if that defendant would be "cooperative with the investigation, the district attorney would be informed of this fact."

Was the confession voluntary?



Once again, the confession was found to be voluntary. Without more (the court implies a tiny bit more), defendant's statements don't become involuntary. *Greer, supra at 356.*

Coercion

Coercion may also work to overbear a defendant's will and convert an otherwise voluntary confession into an involuntary one.

The focus is not whether the interrogator's questions were the cause of the confession, but were they so "coercive as to deprive defendant of the ability to make an unrestrained, autonomous decision to confess." *Aesoph at 753.*

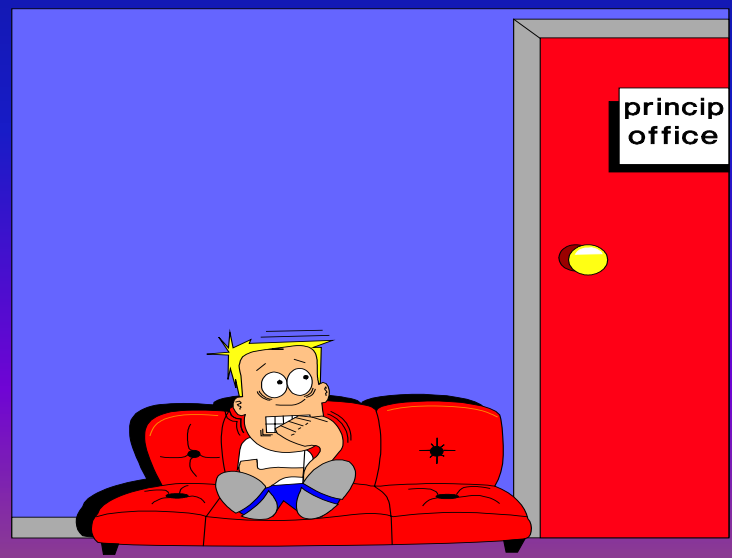
Violence

It is amazing how many times in recent cases actual physical violence is cited as a factor during a *Jackson-Denno* hearing.

In *Illinois v. Traylor, 331 Ill. App. 3d 464, 771 N.E.2d 629 (2002),* defendant testified he confessed because officers tripped him, hit his nose, punched his ribs and squeezed his genitals. The state's burden of proof was heightened after defendant showed injury while in custody.

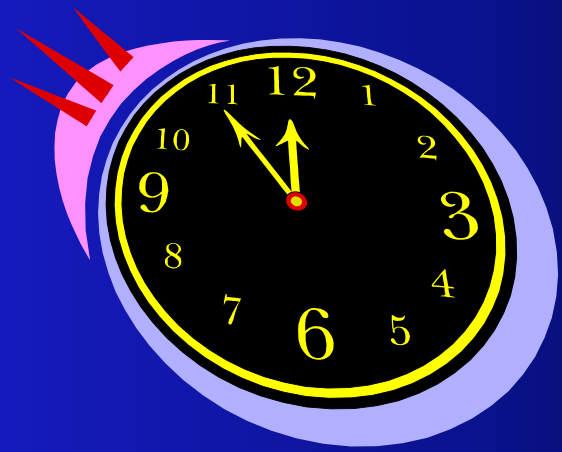
Length of Detention

In federal cases, confessions are not admissible if made during a detention which extends beyond Federal Rule 5(a) limits for delay in taking a defendant before a magistrate.



The so-called *McNabb-Mallory* rule is not binding on the states.

However, extended detention is a factor to be considered in a hearing to determine if a confession was voluntary. *Kansas v. Wakefield, 267 Kan. 116, 977 P.2d 941 (1999)*



The longer the delay, the more likely the confession is involuntary.

Michigan v. McKinney, 251 Mich. App. 205, 650 N.W.2d 353 (2002)

What time limits does your jurisdiction follow?

Post your answer to General Discussion Area in Discussions.

If under the totality of the circumstances you find a defendant did not voluntarily confess,
then
your analysis using the Seven Helpful Questions must

With Question Number Six

On the other hand, if you answered “yes” to Question Six, you now have a voluntary confession ready to be

Admitted into Evidence

but before you do

One last bit of the “confession jungle” has to be cleared.

HELPFUL QUESTION

NUMBER SEVEN

"Was corroborating evidence (*corpus delecti*) admitted?"

The *corpus delecti rule* helps eliminate false confessions.

Traditionally, all jurisdictions required corroboration. Many states continue to follow the rule strictly. The federal courts and a fair number of states have adopted the so-called trustworthy doctrine.

The trustworthiness rule has relaxed the requirements. A confession may be admitted with substantial independent evidence that supports the trustworthiness of defendant's statement.

Usually, corroborating evidence is admitted and then the confession, but a court may admit the confession before the independent evidence of guilt is adduced.

United States v. Duvall, 47 M.J. 189 (CAAF 1997)

Now you have completed your analysis and cleared a path to the admission of a confession!

But do you still have one small nagging doubt. . . .

What about FRE 403?

Remember I said at the beginning of this session there were two fundamental evidentiary issues that do NOT need to be addressed when using the Helpful Questions analysis?

One issue has been covered--confessions are not hearsay.

The second issue is FRE 403.

And it is mooted by our analysis.

You do not have to ask the FRE 403 question--"Does undue prejudice outweigh the probative value?"

As we have seen, confessions are highly probative. They are equally prejudicial. However, the prejudice is NOT undue. Any undue prejudice is resolved by Questions One through Seven!

Yes, you certainly have do a lot of jumping when deciding whether or not a confession is

ADMISSIBLE

But by using the
Seven Helpful Questions

have become
a fearsome

trail blazer